THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22289 OF 2005

3rd AUGUST, 2006

BETWEEN

Singareni Collieries Company Limited.

… Petitioner

vs.

The District Collector, Govt of Andhra Pradesh, Khammam District, Khammam and others.

… Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.22289 OF 2005

ORDER:

Singareni Collieries Company Limited (Singareni Collieries, for brevity) filed the present writ petition assailing the proceedings of the District Collector, Khammam, first respondent herein), dated 19.09.2005, whereby and whereunder the District Collector restored No Objection Certificate (NOC) granted to Indian Oil Corporation Limited (IOC), the sixth respondent herein, on 30.05.2005, to install a retail outlet in the land admeasuring 1313.33 square yards in survey No.609 of Yellandu. The petitioner filed the present writ petition mainly contending that the land where petroleum outlet is to be set up is a land, which was initially leased out to Singareni Collieries, and therefore, grant of NOC is illegal and arbitrary.

The brief fact of the matter is as follows. The State leased out the land admeasuring Acs.953.16 guntas in survey No.609 of Sudimalla village of Yellandu Mandal for a period of initially thirty (30) years, which was later extended from time to time. The petitioner alleges that the total extent of land in survey No.609 is Acs.1059.02 guntas, out of which the land admeasuring Acs.953.16 guntas in survey No.609 is in exclusive possession of the petitioner company. The seventh respondent claimed to have purchased land in survey No.609/2/43 admeasuring Acs.3.00. He applied to sixth respondent for a petroleum retail outlet in an extent of about 1300 square yards. As required under relevant Rules, he

approached the District Collector, who issued NOC in favour of the seventh respondent. Having come to know about this, the petitioner made a representation to the District Collector on 18.05.2005 *inter alia* informing that one Abhimanyu constructed Kalanjali theatre on the strength of Patta given to him and attempted to occupy the Government land under lease to the petitioner, and his brother Satishlal is taking steps for construction of petrol bunk. The petitioner requested the District Collector to take necessary action for cancellation of the NOC. In response thereto, the Collector issued an order on 30.05.2005 keeping NOC, dated 13.04.2005, in abeyance. Questioning the said order, seventh respondent filed W.P.No.14085 of 2005 before this Court and the same was disposed of on 12.07.2005. This Court directed the District Collector to dispose of the matter after conducting joint survey within six weeks thereof. The Assistant Director, Survey & Land Records, fifth respondent herein, submitted representation to the District Collector on 11.08.2005. After considering the same, the Collector issued impugned order restoring NOC issued to the seventh respondent.

The District Collector, Khammam, and Senior Divisional Retail Sales Manager, IOC, filed counter affidavits. Seventh respondent also filed separate counter affidavit. The gist of these three counter affidavits may be culled out from the counter affidavit of the District Collector to avoid repeating the pleadings in the three counters. It is the case of the District Collector that out of total extent of Acs.1,059.02 guntas, an extent of 953.16 guntas was leased out to the petitioner for mining purpose, that subsequently an extent of Acs.105.26 guntas was assigned to the eligible persons. An extent of Acs.3.22 guntas to Bindulal, the father of the seventh respondent, under Loani Rules in 1951. The same was also recorded in Khasra Pahani in 1954-1955. Subsequently, Bindulal purchased an extent of Acs.5.00 guntas of land in survey No.609 from another assignee namely Abdul Rahman on 11.04.1965. As the assignment was made prior to the issue of G.O.Ms.No.1406, dated 25.07.1958 (which prohibited transfer of assigned land), there was no condition prohibiting alienation of the land. It appears Abhimanyu, brother of the seventh respondent, executed gift deed on 28.06.2001 in favour of his brother – seventh respondent herein. When the seventh respondent approached IOC, they verified the title and possession of the seventh respondent and entered into registered sale deed on 08.01.2004 for establishing retail outlet. After considering all this, the District Collector issued NOC. As directed by this Court in W.P.No.14085 of 2005, dated 12.07.2005, Joint survey was conducted on 09.08.2005 by the Deputy Inspector of Survey and Assistant Director (fifth respondent herein) after issuing notice to the petitioner company and respondents 6 and 7. During the survey, the representatives of the petitioner company,

and respondents 6 and 7 were present and admeasuring Acs.105.26 guntas assigned to various persons was surveyed in the presence of officials. The report was submitted to the District Collector along with sketch map demarcating the area leased out to the petitioner company (Acs.953.16 guntas) and the land assigned to others (Acs.105.26 guntas). Taking into consideration, the District Collector issued impugned orders on 19.09.2005 revoking the earlier orders keeping NOC in abeyance.

Learned counsel for the petitioner submits that the District Collector has not considered the entire record before issuing impugned order. He would urge that subsequent to the earlier report, dated 11.08.2005, submitted by fifth respondent, the Survey Department submitted another report showing that the disputed land within the area leased out to the petitioner company. Based on which, the Joint Collector directed the joint cadastral survey and therefore, the finding given in the impugned order cannot have any finality. He placed reliance on the minutes of the meeting held on 13.09.2005 when officials of the petitioner company, MRO Yellandu and Deputy Inspector (Survey) were present.

Learned counsel for IOC, seventh respondent, and Assistant Government Pleader opposed the writ petition. They contended that as directed by this Court, the survey was conducted by the fifth respondent, who prepared the land, which was assigned to various assignees and also land leased out to the petitioner. Even if it is subsequently decided in the meeting held on 13.09.2005 to conduct survey of the land leased out to the petitioner company, in the absence of any finding in the Minutes that there was any encroachment by private persons into the land of the petitioner company, the same has no bearing on the decision of the District Collector.

The question essentially is whether the land claimed by the seventh respondent or his predecessor falls within the area leased out to the petitioner company for mining. There is no dispute that out of the total extent of Acs.1059.02 guntas of land comprised in survey No.609, the land admeasuring Acs.953.16 guntas in sub-divided survey No.609/1 was only leased out to the petitioner company. The balance extent of Acs.105.26 guntas in sub-divided survey No.609/2 was assigned to various persons including the father of the seventh respondent. If in the survey conducted by the fifth respondent pursuant to the orders of this Court, it is found that the land of the seventh respondent falls within the assigned portion of the land in survey No.609, the controversy must rest there. Any further grievance of the petitioner regarding the area cannot be redressed in the writ petition. Now it is brought to the notice of this Court by the counsel for the opposite parties that the petitioner company has already filed suit being O.S.No.51 of 2005 on the file of the Court of

the Junior Civil Judge, Yellandu, for declaration of its leasehold rights. Though initially *ad interim* temporary injunction was granted in I.A.No.60 of 2005, subsequently, the Court of the Junior Civil Judge, dismissed application for injunction being I.A.No.60 of 2005, on 21.10.2005. The writ petition is filed before this Court on 18.10.2005, presumably on visualizing that the injunction petition would be dismissed. As the suit is filed for declaration of leasehold rights, the petitioner can always agitate this question before the civil Court. Secondly, a perusal of the Minutes, dated 13.09.2005, would not indicate that any decision was taken to survey land admeasuring Acs.105.26 guntas assigned to eligible persons. A decision was taken to conduct survey through cadastral survey to demarcate the land leased out to the petitioner company. Therefore, as pointed out by the District Collector in the counter affidavit, the petitioner company did not properly safeguard the lands leased out to it, and allowing it be encroached upon by third parties. It is quite probable that the land in the vicinity may be under the encroachment of others and to find out the same, survey is now ordered, which has no bearing on the question raised by the petitioner company before the District Collector in their application, dated 18.05.2005 after NOC was granted in April, 2005. Therefore, this Court is of considered opinion that there are no merits in the writ petition and the writ petition is liable to be dismissed.

In the result, for the above reasons, the writ petition is dismissed. No costs.

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(V.V.S.RAO,J)

03.08.2006
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